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Citation for published version:

Savaresi, A, *Climate Change and Forests: Benefit-sharing Perspectives*, 2014, Web publication/site, BeneLex Blog. <<http://www.benelexblog.law.ed.ac.uk/2014/02/27/climate-change-and-forests-benefit-sharing-perspectives/>>

Link:

[Link to publication record in Edinburgh Research Explorer](#)

Document Version:

Publisher's PDF, also known as Version of record

Publisher Rights Statement:

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Climate change and forests: benefit-sharing perspectives

Posted on [February 27, 2014](#) by [Annalisa Savaresi](#)

by Annalisa Savaresi



February 2014: Benefit-sharing considerations have emerged in the context of efforts to mitigate climate change by protecting forests. Approximately one sixth of global anthropogenic greenhouse gas emissions result from the clear-cutting of forests, felled to gain land for agriculture and pasture in the tropics ([IPCC](#), at 36). Endeavours to reduce forest loss and enhance forest cover in developing countries under the United Nations Framework Convention on Climate Change (UNFCCC) have led to an unprecedented wave of national reforms. These reforms include contentious questions of forest governance, including the protection of the rights of forest-dependent communities. After introducing the relevant international legal framework, this post illustrates how benefit-sharing has increasingly been regarded as a key issue for the long-term feasibility and success of efforts to mitigate climate change in the forest sector in developing countries.

The international legal framework

For almost ten years Parties to the UNFCCC have been negotiating measures to reduce forest loss and enhance forest cover (so called 'forest carbon sequestration') in developing countries, commonly referred to with the acronym [REDD+](#). The underlying idea is quite simple: providing financial incentives for forest carbon sequestration in developing countries, where emissions from the forest sector tend to be concentrated. In 2010 UNFCCC developing country Parties were encouraged to undertake REDD+ activities following a phased approach, with the creation of enabling conditions preceding payments for forest carbon sequestration ([Decision](#)

[1/CP.16](#), at 70-73). UNFCCC Parties have nevertheless struggled to agree on how to put this idea into practice.

Consensus has been hampered by disagreement on a series of technical questions specific to the forest sector, as well as on broader forest governance conundrums. With millions of people in developing countries depending on forests for fuel, food, and income, REDD+ activities will challenge already precarious forest ownership, tenure and governance arrangements. The long-term success of REDD+ activities has therefore been predicted to depend upon ensuring that they benefit 'poor people and forest communities' ([Eliasch Review](#), at 53).

The implementation of REDD+ activities can in fact significantly affect the enjoyment of several internationally protected human rights, including the right to freedom of movement and personal security, housing, food, water, health, an adequate standard of living, and culture. To counter the potentially negative impacts of REDD+ activities, a list of broadly worded safeguards has been adopted under the UNFCCC, requiring, amongst other things, that Parties should respect 'the knowledge and rights of indigenous peoples and members of local communities,' and 'enhance' the social and environmental benefits of REDD+ activities ([Decision 1/CP.16](#), Appendix I). In the absence of more specific UNFCCC guidance, what these broadly worded safeguards entail depends on the domestic law and international human rights obligations of the country in question. Virtually all countries eligible to undertake REDD+ activities are parties to the two [international human rights covenants](#), several have adhered to regional human rights systems, and some have also ratified [ILO Convention 169](#) on indigenous peoples' rights and the UN Convention on the Elimination of All Forms of Racial Discrimination.

Information on how safeguards have been addressed and respected should be included in Parties' periodical national communications ([Decision 12/CP.17](#), at 3-4) and, when and if REDD+ activities actually begin, REDD+ payments depend on that information being provided ([Decision 9/CP.19](#), at 4). So far, however, no international system to provide REDD+ payments under the UNFCCC has been established. At the most recent climate conference, held in [Warsaw in November 2013](#), UNFCCC Parties adopted a set of decisions on REDD+ finance, institutional arrangements and methodological issues, jointly referred to as the 'Warsaw REDD+ Framework.' These decisions were hardly ground-breaking, and largely consolidated and reiterated guidance already embedded in earlier decisions.

REDD+ readiness

Notwithstanding the lack of precise international institutional and financial arrangements for REDD+ under the UNFCCC, numerous developing country Parties to the Convention have voluntarily initiated domestic law and policy reforms aimed at establishing a level-playing field, which will eventually allow them to receive payments for forest carbon sequestration under comparable conditions (so-called

‘REDD+ readiness’). The process of adopting national reforms has been tortuous and time-consuming, often requiring a rethinking of extant forest governance arrangements. The scope of these reforms extends to vexed questions concerning the rights of forest dwelling/dependent communities.

Domestic reforms have been undertaken under the guidance of two international initiatives established beyond the institutional scope of the UNFCCC: the United Nations Collaborative Programme on Reducing Emissions from Deforestation and Forest Degradation ([UN-REDD Programme](#)) and the World Bank’s Forest Carbon Partnership Facility ([FCPF](#)). These initiatives have produced ‘informal’ standards to supplement the paucity of guidance adopted under the UNFCCC with some involvement from non-state actors including NGOs and indigenous peoples’ representatives. Even though guidance adopted by UNFCCC Parties does not make any specific reference to benefit-sharing, this concept has emerged in the framework of REDD+ readiness endeavours. Benefit-sharing requirements feature in standards developed and deployed both by the UN-REDD Programme and the FCPF, but their approaches are quite different.

Benefit-sharing perspectives

Standards adopted by the UN-REDD Programme have embraced a ‘rights-based approach’ with the specific aim to help countries meet their international commitments, including human rights commitments ([UN-REDD Programme 2012](#), at 2). The UN-REDD Programme standards require that the design, planning and implementation of national REDD+ programmes ‘promote sustainable livelihood and poverty reduction’, and ensure ‘*equitable, non-discriminatory and transparent benefit-sharing*’ among relevant stakeholders, with special attention to the most vulnerable and marginalized groups (Criterion 12). The standards further require that national REDD+ programmes, ‘respect and promote the recognition and exercise of the rights of indigenous peoples, local communities and other vulnerable and marginalized groups to land, territories and resources, including carbon’ (Criterion 7). The standards categorically exclude the possibility of involuntary resettlement (Criterion 10). The UN-REDD Programme has also adopted guidelines outlining a framework that partner countries are asked to use to seek and obtain the free prior and informed consent of affected communities ([UN-REDD Programme 2013](#) and [Legal Companion 2013](#)).

No equivalent requirement exists under the FCPF, which relies upon [controversial](#) World Bank Operational Policies. The protection of the rights of indigenous peoples is thus subject to a series of *distinguos*. The free prior and informed consent of indigenous peoples is required only when the partner country has ratified ILO Convention 169 or adopted national legislation on the issue ([Guidelines on Stakeholder Engagement 2012](#), at 7), whereas the option of involuntary resettlement is openly contemplated ([OP 4.10 – Indigenous Peoples 2013](#), at 20). Indigenous peoples should ‘receive benefits in a culturally appropriate way’ and ‘*share equitably*

in the benefits to be derived from commercial developments.' Benefits should be 'at least equivalent' to those to which 'any landowner with full legal title to the land would be entitled in the case of commercial development on their land' (*Id.*, at 18-19). This standard does not however address cases where land titles remain unsettled under domestic law, a situation that is far from infrequent in numerous developing countries. The treatment of forest-dependent communities that may not be regarded as indigenous peoples is less clear.

Even though the FCPF has decided that, in cases where REDD+ readiness assistance is delegated to third institutions that deploy more stringent standards than its own, the latter prevail (*Id.*, at 3), states that are partners solely to the FCPF only need to abide by the less stringent standards. This is a serious setback in progress towards the establishment of a level-playing field enabling eligible UNFCCC Parties to receive payments for forest carbon sequestration under equivalent conditions. A comparative study carried out between 2009 and 2012 found that existing benefit-sharing arrangements tend to focus on landowners and/or investors, rather than traditional 'forest stewards' (CIFOR 2013, at vii).

Outlook

Guidance adopted by the UN-REDD Programme in 2012 and 2013 is yet to make an impact, but may be viewed as a promising approach to share the benefits arising from REDD+ activities in keeping with human rights. The adoption of coordinated guidance on benefit-sharing for REDD+ activities under the UNFCCC would certainly help to address the incongruences in the REDD+ readiness process. For the time being the issue is not on the UNFCCC negotiation agenda. Nonetheless, guidance adopted under the Convention on Biological Diversity (CBD), to which virtually all UNFCCC Parties are party (with the exception of the US and Andorra), already provides a crucial term of reference to develop equitable benefit-sharing arrangements to ensure the sustainability of REDD+ activities (Decision XI/19, Annex, at 10).

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